

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC. CIVIL APPLN.(CONTEMPT PETITION) No 740 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ACHARYA JAYABEN SAKARLAL

Versus

RASIKLAL M JHALAVADIA & 3 ORS

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Appearance:

MR CV PRAJAPATI for SV RAJU for Petitioners

MR MANOJ POPAT for Respondent No. 1, 2, 3, 4

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CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

Date of decision: 11/03/98

ORAL JUDGEMENT (Per Patel, J.)

By this petition, six persons have moved this Court interalia praying to initiate action against the respondents under the provisions of the Contempt of Courts Act on the allegation that the respondents have flouted the directions issued by Gujarat Primary

Education Tribunal in its order dated 3.5.1991 passed in Application No. 245/88.

2. Short facts of the case, which is not enumerated in the petition but which we have gathered from the order passed by the Tribunal are as under:-

2.1 The petitioners were working in a school known as Adarsh Kelavani Mandir. The school management passed a resolution to close the school on the ground that the management is not in a position to run the school and District Education Officer (hereinafter referred to as the D.E.O.) was conveyed information about this. It appears that after scrutinizing the last two years accounts, DEO came to the conclusion that it cannot be said that the financial position of the school is weak, and, therefore, rejected the application. School authorities conveyed their intention of closing the school to the Teachers as well as to the parents of the pupils. By letters dated 4.5.1988, vide Exh. 49 to 68, which were produced before the Tribunal, staff/teachers were informed about the same. The services of the Teachers were terminated on 25.8.1988 after office hours. On 11.7.1988, application was forwarded for approval to DEO but within 45 days no decision was taken on such application, and, therefore, the school management considered it as 'deemed approval' and gave effect to the termination order of the Teachers with effect from 31.8.1988. That order came to be challenged before the Tribunal and the Tribunal held against the management, as a consequence of which direction was given to the management to the effect that the petitioners be deemed to have been reinstated in services with full backwages and be paid salary regularly on 10th of every month by Accounts Payee Cheque. It was further directed that within three months, backwages should be paid by the respondent management. It seems that nothing was done in the matter thereafter by the management. An application being No. CMA 1054/91 was filed, and the Court, on 29th October 1993, considering the facts placed before it, was of the view that the Trust is not in a position to run the School. It was also made clear before the Court that the management had started a new school and 11 teachers have been taken back in service. Considering this, it seems that liberty was given to the petitioners to file a fresh application pointing out facts and circumstances of the case, indicating that situation has improved and the respondents are not taking the petitioners in service, which may amount to deliberately flouting the order passed by the Tribunal.

3. It appears that after the closure of the school, some teachers took keen interest in the matter and realising the disability of the school management to discharge its obligation and pay backwages, they requested the management to reopen the school and agreed to take their salaries, wages and allowances out of the fees collected from the students and would not burden the management any further. Thus, the following teachers, who were petitioners in MCA No. 1054/91, have joined the services:-

- (1). Zalavadiya Gopaldas Damjibhai
- (2). Meghani Vinodrai Jayantilal
- (3). Trambadiya Urmilaben Dayalal
- (4). Kalavadiya Jayshreeben Chimanlal
- (5). Makadiya Jayaben Ladhahbai
- (6). Kalavadiya Shashikant Mohanlal
- (7). Godhani Vanitaben Vallabhadas
- (8). Haraniya Jyotsnaben Chhaganlal
- (9). Bangoriya Pravinchadra Karshandas

The aforesaid persons, in their sworn testimony have stated before us that looking to the financial position of the Trust, it was impossible for the Trust to pay backwages even after closing all the institution, and in view of this, they have unconditionally requested the respondent management to reopen the school. It is further stated that they have unconditionally agreed that they would take their salaries, wages and allowances out of the fees collected from the students and would not burden the management any further. The aforesaid nine persons, considering that if the management is required to pay the salary, wages and allowances as prescribed by the Government, the school will have to close down; Therefore, they have agreed to accept the salary out of the fees and agreed to reopen the school. It appears that it is a joint effort made by the aforesaid teachers and the school management to see that education activities are continued and services of the teachers are continued.

4. Mr. Prajapati, on the basis of Balance Sheet of Shree Adarsh Kelawani Mandal for the period from 1.4.1991 to 31.3.1992 submitted that the school has huge funds, viz: Rs.7,63,829-85 towards building construction fund and Rs.2,30,052-25 towards V.P. Ghetia Smarak Fund. Advocate should see that these amounts are already spent and have been invested in lands and building which is clear from the balance sheet. Entire Balance Sheet is to be seen, which is signed by Chartered Accountant. Our attention is also drawn that the school is spending huge

amount, particularly as per the statement of account for the period ending 31.3.1992 such as Rs.1,51,596-35 for purchase of instruments for Physical Science Laboratory, Rs.41,065-75 for purchase of instruments for Chemistry Laboratory, and Rs.32,315-00 for purchase of instruments for Biology laboratory, which indicates that the school has funds with it. He also pointed out that if the Balance Sheet is read, it becomes clear that huge amount is lying in the Bank account. It is further submitted that the financial position has been improved, and, therefore, there is no reason why the school management should not be directed to pay the backwages as directed by the Tribunal. It is required to be noted that except the six persons who are petitioners of the present petition, other teachers by their joint efforts with the management, have reopened the school; Those persons realised the situation and are putting in joint efforts. We have also perused the Balance Sheet, particularly the figures mentioned in the Cash on Hand and Bank Balance. We also asked the learned advocate for the respondent to ask the Accountant of the School to remain present before us to explain the said figures. He has explained to us that Rs.41,000/- lying with the Rajkot Dist. Co-Op. Bank which was a donation, is kept in a Fixed Deposit, and out of the interest earned from the said deposit is used for distribution of prizes, and that amount is given specifically for that purpose and cannot be used for any other purpose; Rs.1,02,500/- lying with the State Bank of India is in a joint account with the D.E.O., Rajkot, and the said amount is to be utilised for direct payment to the Teachers of Higher Secondary Teachers and cannot be utilised for the institute where the petitioners are working; Rs.40,981/- lying with the Rajkot District Co-Op. Bank is for payment against loan; Rs.69,250/lying with the Union of India is towards loan taken from the Bank. The aforesaid figures are as on 31.3.1992. From the statement of account it is pointed out that Rs.19,944-82 was the profit of the year and that can be said to be the real income of the Trust. Learned Advocate for petitioners submitted that instead of spending huge amount for instruments, the same should have been diverted for payment to the petitioners. It is suggested that without necessary instruments, School should run and may invite consequences which may be penal in nature? Students are to be taught without instruments? One should not forget that schools are essentially for imparting education. It is the duty of the persons in management to see that students are taught properly. Here, teachers are also taking interest and therefore, without clinching evidence, nothing can be said against the management.

5. In the next year, i.e. for the period ending 31.3.1993, it is pointed that the profit is Rs.15,981-80 only. Thus the profit is reduced by about Rs.4000/-. In 1994 it appears that the profit has increased to Rs.38,844/-. Thus, it can be said that to some extent the position has been improved. It is pointed out to us that at the same time, the school has paid more salary than which was being paid earlier. The petitioners of the present petition are not willing to take salary which is being offered to other Teachers as agreed. On behalf of the respondents, it is pointed out that some amounts are deposited in the Bank on 5.12.1997, 1.1.1998, 2.2.1998 and 2.3.1998. Learned advocate for the respondents state that these amounts are deposited for paying to the petitioner-teachers of this petition with a view to see that all teachers are paid equal amount (in proportionate to scale) On 27.10.1997, the amount lying in the Bank was Rs.44,287/- in the Rajkot District Co-Op. Bank Ltd. in account No.12, which is in the name of the Institute. The statement was also given to us indicating that in the said account on different dates amounts have been deposited in the Bank. It is stated that as mentioned in the said statement, the following amounts are lying for paying to the following teachers:

1. Keshubhai Vaghela Rs.3740/-
2. Jashvantiben Keshavlal Rs.3470/-
3. Keshavlal R Tank Rs.20,895/-
4. Sushilaben Valjibhai Sonigara Rs.20,895/-

We are informed that two teachers have already retired.

Thus it is very clear that the teachers who are taking active interest in the activities and with the co-operation of the management, they have seen that the school runs and more and more amount is distributed amongst themselves; The petitioners have not taken the amount and the same is lying in the Bank.

6. Mr. Prajapati appearing for the petitioners teachers submitted that the teachers are paid only Rs.1500/- and when they approached for full salary, they were asked to give an undertaking that they shall not claim backwages. When the other teachers have agreed to accept the amount of salary out of fees collected and the management is running the school with the co-operation of Teachers, it cannot be said that the respondents are guilty. Books of account reveals profit but at the same time, teachers' salary is also increased and teachers are

paid proportionately more. Not only that, but they accommodated the petitioners. It is also evident from what is submitted that as and when the situation improved, salary has also been increased. Moreover, certain amount is being deposited in the Bank for paying to the applicant-teachers. It is also clear from the affidavit of the petitioner that even the petitioner teachers are already taken back in service. Petitioners No.1 and 4 have already resigned from the School. Petitioners No.5 and 6 have retired on 14.6.96 and 17.5.96 respectively, while petitioner No.2 is today working as a Teacher.

7. In the circumstances, we are of the view that it cannot be said that the respondents are guilty of contempt of the Court. This application, therefore, stands rejected. Rule is discharged.

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